

DETAILED ACTION - ALLOWANCE

Claim Status

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' amendment and submission filed April 3, 2009, has been entered. Claims 21 and 23 have been amended. No claims were cancelled or newly added. Accordingly, claims 1-21, 23, 24, 26-28 and 30-45 are pending in the application. Claims 1-20, 40, and 41 remain withdrawn from further consideration, with traverse.

Claims 21, 23, 24, 26-28, 30-39 and 42-45 were indicated as rejected under 35 U.S.C. 103(a) as being unpatentable over Liu et al., US 2002/0137211 in view of Zhao et al. (Acta Biochimica et Biophysica Sinica 33(1): 112-116, Jan. 2001); Zhang et al. (Acta Biochimica et Biophysica Sinica 31(2): 119-123, 1999) and GenBank Acc. No. AF226688., in the Advisory action dated April 17, 2009.

Applicants have amended base claims 21 and 23 to limit the promoter in the gene cassette to nucleotides 1-5484 of SEQ ID NO: 3, shown to enhance the activity of a fibroin H promoter when operably linked to an exogenous gene. As the specific limitation is not taught by the cited prior art, the rejection is hereby withdrawn.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Applicants' representative on September 2, 2009.

The application has been amended as follows:

Art Unit: 1633

In the claims,

Claims 1-20, 40 and 41 have been cancelled.

REASONS FOR ALLOWANCE:

The following is an examiner's statement of reasons for allowance:

The prior art of record does not teach or suggest nucleotides 1-5484 of SEQ ID NO: 3, upstream of the fibroin H promoter as capable of increasing the expression of an operably linked protein gene. While the claimed sequence constitutes a segment of GenBank Accession No. AF226688 that is 80 Kb in length, a person of ordinary skill in the art would not have been apprised of its transcription enhancing activity.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 21, 23, 24, 26-28, 30-39 and 42-45 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FEREDOUN G. SAJJADI whose telephone number is (571)272-3311. The examiner can normally be reached on 6:30 AM-3:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fereydoun G Sajjadi/
Primary Examiner, Art Unit 1633